

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CLINTON F HITNER,

: No. 1:21-CV-0430

Plaintiff :

: Judge Conner

v.

:

: Electronically Filed Document

CORRECTIONS CAPTAIN REESE,

: Complaint Filed 03/10/21

CORRECTIONS LT. NEWBERRY,

:

JOHN DOE (1), JOHN DOE (2) and

:

JOHN DOE (3),

:

Defendants :

**COMMONWEALTH DEFENDANTS' ANSWER & AFFIRMATIVE
DEFENSES TO THE AMENDED COMPLAINT**

Commonwealth Defendants, Reese and Newberry, through counsel, hereby file this Answer and Affirmative Defenses to the Amended Complaint in response to Plaintiff's Amended Complaint filed on May 19, 2021. (*Doc. 19.*) It is noted that this undersigned Counsel does not represent any of the John Does named as Defendants in this action. In order to fully respond to the Amended Complaint, Commonwealth Defendants respond to each heading within the Amended Complaint and have clearly marked responses below.

INTRODUCTION¹

This paragraph contains conclusions of law to which no response is required.

To the extent a response is required, DENIED.

JURISDICTION

1. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, DENIED.
2. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, DENIED.

PARTIES

3. ADMITTED.
4. ADMITTED in part, DENIED in part. It is ADMITTED only that Defendant Reese is employed by the Pennsylvania Department of Corrections. Any other factual averments made are DENIED.
5. ADMITTED in part, DENIED in part. It is ADMITTED only that Defendant Newberry is employed by the Pennsylvania Department of Corrections. Any other factual averments made are DENIED.
6. This paragraph references a party, John Doe 1, who is not represented by this undersigned Counsel; therefore, no response is required.

¹ Commonwealth Defendants are adopting the headings utilized by Plaintiff purely for organization and convenience of the reader. In using these headings, Commonwealth Defendants are not making any admission regarding their content and expressly deny any factual averments contained therein.

7. This paragraph references a party, John Doe 2, who is not represented by this undersigned Counsel; therefore, no response is required.

8. This paragraph references a party, John Doe 3, who is not represented by this undersigned Counsel; therefore, no response is required.

FACTS

9. ADMITTED.

10. DENIED.

11. This paragraph references parties, John Doe 1, John Doe 2, and John Doe 3, who are not represented by this undersigned Counsel; therefore, no response is required.

12. DENIED AS STATED. It is ADMITTED only that another inmate attacked Plaintiff while in the exercise yard. Any other factual averments made are DENIED.

13. After reasonable inquiry, Defendants are without knowledge or information to verify the veracity of Plaintiff's alleged injuries; therefore, any factual averments made are DENIED.

DELIBERATE INDIFFERENCE/FAILURE TO PROTECT AND CRUEL AND UNUSUAL PUNISHMENT

14. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, DENIED.

15. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, DENIED. By way of further response, this paragraph references parties, John Doe 1, John Doe 2, and John Doe 3, who are not represented by this undersigned Counsel; therefore, no response is required.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, DENIED.

CLAIM FOR RELIEF

17. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, DENIED.

18. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, DENIED. By way of further response, this paragraph references parties, John Doe 1, John Doe 2, and John Doe 3, who are not represented by this undersigned Counsel; therefore, no response is required.

RELIEF REQUESTED

A.) This is a request for relief to which no response is required. To the extent that a response is required, DENIED.

B.) This is a request for relief to which no response is required. To the extent that a response is required, DENIED.

C.) This is a request for relief to which no response is required. To the extent that a response is required, DENIED.

AFFIRMATIVE DEFENSES

In addition to the DENIALS asserted above, Commonwealth Defendants assert the following Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state any claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Commonwealth Defendants are immune from liability by virtue of absolute, qualified, official governmental, state sovereign, and/or any other immunity.

THIRD AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims are barred based on lack of personal involvement.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff may have failed to exhaust available administrative remedies regarding one or more of his claims required by the Prisoner Litigation Reform Act of 1995.

FIFTH AFFIRMATIVE DEFENSE

At no time have Commonwealth Defendants, either individually or in concert with others, deprived or sought to deprive Plaintiff of any rights, privileges, or immunities secured by him to the Constitution or laws of the United States.

SIXTH AFFIRMATIVE DEFENSE

Defendants had legitimate penological reasons for all decisions made and actions taken.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to some or all of the damages he seeks.

EIGHTH AFFIRMATIVE DEFENSE

Commonwealth Defendants have not acted with deliberate, intentional, or reckless indifference toward Plaintiff or his conditions of confinement.

Commonwealth Defendants reserve the right to assert additional Affirmative Defenses, as appropriate, that become available during the pendency of this litigation.

Respectfully submitted,

JOSH SHAPIRO
Attorney General

By: *s/ Mary Katherine Yarish*
MARY KATHERINE YARISH
Deputy Attorney General
Attorney ID #328843

KAREN M. ROMANO
Chief Deputy Attorney General
Civil Litigation Section

*Counsel for Defendants Reese and
Newberry*

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Phone: (717) 783-6315

myarish@attorneygeneral.gov

Date: June 9, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CLINTON F HITNER,	:	No. 1:21-CV-0430
Plaintiff	:	
	:	Judge Conner
v.	:	
	:	
CORRECTIONS CAPTAIN REESE,	:	Electronically Filed Document
CORRECTIONS LT. NEWBERRY,	:	Complaint Filed 03/10/21
JOHN DOE (1), JOHN DOE (2) and	:	
JOHN DOE (3),	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, Mary Katherine Yarish, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on June 9, 2021, I caused to be served a true and correct copy of the foregoing document titled *Commonwealth Defendants' Answer and Affirmative Defenses to the Amended Complaint* to the Plaintiff via hand delivery through the Department of Corrections. This alternative method of service is being used due to the COVID-19 emergency.

VIA HAND DELIVERY

Clinton F. Hitner, GJ-8177

SCI Greene

Pro Se Plaintiff

s/ Mary Katherine Yarish
MARY KATHERINE YARISH
Deputy Attorney General